IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3422 of 1995

HARNAM SINGH
V/S
STATE & ORS

Mr. VINEET SANADHYA, Mr. VIKAS BALIA, for the appellant / petitioner

Mr. MK GARG, for the respondent
Mr. OP BOOB, A.G.A.

Date of Order : 17.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioner by this petition seeks to challenge the order Annex.4 dated 31.8.95, passed by the Divisional Commissioner, and prays that the respondent authorities be directed to receive penal rate of land from the petitioner, and regularise the allotment made in his favour by issuing a Sanad.

The facts of the case, as pleaded in the writ petition are, that the petitioner and his brother Mehtab Singh were both allotted 50 bighas of land on the basis of a verified claim under the Displaced Persons (Compensation and Rehabilitation) Act, hereafter to be referred to as the Act, and after allotment the allotees were put into possession. Then in mutual family partition, 25 bighas of land situated in Chak 5-C Choti fell in share of Mehtab

Singh, while 25 bighas of land situated in Chak 8-H Bada fell to share of the petitioner Harnam Singh. According to the petitioner, subsequently this claim was not found to be true, and penal rate of land was received from Mehtab Singh, and regarding his 25 bighas of land a Sanad was issued. However, from the petitioner only Rs.444/- were received, though he requested for receiving the remaining amount also, but then the allotment regarding his 25 bighas of land was cancelled, and in appeal the order was set aside vide order dated 24.2.75, and the matter was remanded back to the Settlement-cum-Managing Officer, Sriganganagar. It may be observed here, that the petitioner has neither produced the order of allotment of 50 bighas of land, comprised in Chak 5C Choti and Chak 8H Bada, nor has he produced the copy of the order of cancellation of the allotment, so much so, that even date of that order has not been disclosed, nor the order of remand dated 24.2.75 has been produced. The petitioner has then alleged that after remand, the Managing Officer cancelled the allotment of 25 bighas of land vide order dated 31.10.75, Annex.1 against which an appeal was preferred before the Settlement Commissioner, who dismissed the same vide order dated 17.2.78, Annex.2. Then a revision was preferred under Section 24 of the Act before the Revenue Appellate Authority-cum-Chief Settlement Commissioner Rehabilitation, who allowed the same and set aside the orders of the authorities below, vide judgment dated 18.12.85, Annex.3.

According to the petitioner, it was found in Annex.3 that instead of canceling allotment, it should have been regularised by receiving penal rate, and Sanad should have been issued, when it has been issued to Mehtab Singh, as the petitioner is in long possession, and has improved the land. It is then alleged that during pendency of the aforesaid revision, this land was allotted to Sevi Bai and others, without there being any justification and without affording opportunity to the petitioner. Then Sevi Bai and others submitted a revision against this order Annex. 3, under Section 33 of the Act, likewise the petitioner also filed identical revision, raising grievance against the allotment of land to Sevi Bai. This revision was decided by the Divisional Commissioner vide order dated 31.8.95, who set aside the order dated 18.12.85. This order is produced as Annex.4, and is under challenge.

It is assailed on the grounds, firstly, that the powers under Section 33 of the Act vest with the Central Government, and have never been delegated to the Divisional Commissioner, and thus, the order is wholly without jurisdiction. Then it is contended, that the order dated 18.12.85, Annex.3, is quite in accordance with the provisions of the Act, and satisfies the principles of equality before law, apart from the fact that the provisions of the rules, as well as notifications of the Government of India, do provide that if the claim is found

to be false, then allotment can be regularised and a Sanad can be issued by receiving penal rate, as has been received in the case of Mehtab Singh. Then it is contended that the petitioner is in actual physical possession of the land for last 20 years, and it was not proper to cancel the allotment. Thus largely on these grounds, this order Annex.4 is sought to be quashed.

A reply has been filed on behalf of the private respondents being respondents No.5 to 8, who are Sevi Bai and her sons. During pendency of this writ petition, Sevi Bai and her son Tejuram respondent No.5 and 6 respectively expired, and their legal representatives have been brought on record. In the reply filed on behalf of the private respondent, it is contended, that the petitioner is not resident of Chak 8H Bada, rather he was resident of Koyal Khed, Tehsil Fazalka, and a voter list has been produced as Annex.R/5/1. Then it was not disputed that 50 bighas of land was allotted, but the claim was later on found to be false. Then it is pleaded that the power of attorney holder of the petitioner has sold the land on 2.5.67, by registered sale deed, in favour of Kartar Singh. A photostat copy of certified copy of sale deed has been produced as Annex.R/5/2, and thereafter the petitioner further entered into an agreement to sale 12½ bigha of land, comprised in Murabba No.8, on 7.6.67, to one Bakhtawar Singh and Sher Singh. Then it is contended, that

since the petitioner has sold his land, he has no surviving interest, or locus-standi to maintain the writ petition, and is also of guilty of concealment of this fact from the Court. Then in para-8 it is pleaded, that against the orders dated 17.2.78, Annex.2 a revision was filed by the petitioner, which was dismissed on 17.12.84, copy whereof is produced as Annex.R/5/4, and thereafter when no revision was pending, the land in question was allotted to Sevi Bai on 26.3.85, and she was put in possession on 29.3.85. It is thereafter, that on 8.4.85, the petitioner applied for restoration of the revision, which was restored on 1.8.85, without giving notice to the answering respondent, and even thereafter, despite order, no service was affected upon the answering respondent, as they were not impleaded as parties, and the revision was decided on 18.12.85. It is also pleaded, that against the allotment to answering respondent made on 26.3.85, an appeal was filed by the petitioner, which was dismissed on 14.8.85. Then the petitioner further filed a revision before the Chief Settlement Commissioner, which was also dismissed on 3.3.86. Thus during pendency of the revision petition of the petitioner, against the order dated 17.2.78, the petitioner simultaneously was pursuing the remedies, to challenge the allotment in favour of Sevi Bai, and all these facts have not been disclosed by the petitioner. It is also pleaded, that not only this, against the order dated 3.3.86, the petitioner filed a writ petition also

before this Court, being S.B. Civil Writ Petition No.683/86 (sic 663/86), which was decided on 28.1.92, and this fact also has not been disclosed. Thus, the petitioner is guilty of concealment of material facts, and is disentitled to maintain the writ petition. Then it was maintained that the powers of the Central Government under Section 33 were delegated to the Divisional Commissioner, and the order is thus, within jurisdiction. It was pleaded, that even the petitioner himself filed a revision before the Divisional Commissioner, which also was decided vide Annex.4 itself. The notification of the Central Government dated 27.11.90, conferring powers on the Divisional Commissioner has been placed on record as Annex.R/5/5. Then in view of the fact that Sevi Bai was delivered possession on 29.3.85, pursuant to the allotment dated 26.3.85, the petitioners being in actual physical possession was disputed. Inter-alia with this, it is prayed that the writ petition be dismissed.

Then a rejoinder has been filed by the petitioner, and it was not disputed that the petitioner is residing at Koyal Khed, which was pleaded to be at a distance about 10 kilometers from 8H Bada. Then the averment about allotment of 50 bighas of land was reiterated. Then replying averments of para-3 of the rely, it was pleaded, that Harnam Singh sold this land to Kartar Singh, the brother of Jagtar Singh, who is also power of attorney holder of Harnam Singh, however entering into an agreement in favour

of Bakhtawar Singh and Sher Singh was denied, and it was contended, that after the registered sale deed, the said agreement could not have been entered into. Then regarding locus-standi it was pleaded that the seller can also protect the rights of the transferred land, as responsibility in this regard was taken by the seller. Then relying upon the notification of the State Government dated 16.10.87, Annex.5, it was contended that, the protection is available even in case of transfer of land. Then it was pleaded that even if the revision was dismissed in default, but then it was restored, and was ultimately decided in favour of the petitioner on 18.12.85, and that the proceedings will be treated to be continuous one, and the allotment in favour of Sevi Bai is hit by the doctrine of lis pendence. Then regarding writ No.663/86, it was pleaded that that was wholly inconsequential fact, and it was not decided on merits, but was dismissed as premature, and it was maintained that petitioner is not guilty of suppression of material facts, as the facts alleged to have been suppressed have no bearing. Inter-alia with this it was pleaded that the writ petition be allowed.

A look at Annex.5 shows, that this is a communication of the State Government dated 16.10.87, whereby it was directed, that pending amendment in the Act and Rules, the public should not be made to suffer through court proceedings and litigation, therefore, it was

directed, not to initiate any action for resumption of land transferred in violation of Section 19(2) i.e. without obtaining a Sanad. In my view, since allotment in the present case has not been cancelled on the ground of land having been transferred before obtaining Sanad, Annex.5 is of no relevance for the present purposes.

Arguing the writ petition, learned counsel for the petitioner contended, that even if the claim of the petitioner was not verified, still by virtue of the provisions of Rule 63, read with the Circular of the Central Government dated 26.7.67, the petitioner was entitled to allotment of the land, and it could not be ordered to be canceled, simply on the ground, that the claim was not verified. It was also submitted, that when in identical circumstances, the allotment in favour of the petitioner's brother Mehtab Singh was regularised, there was no justification for treating the petitioner differently. Then it was also submitted, that the learned Divisional Commissioner was in error in not considering that the allotment of land in favour of Sevi Bai was hit by the doctrine of lis pendence, and therefore, the impugned order is liable to be set aside.

On the other hand, learned counsel for the respondent submitted, firstly, that the petitioner is guilty of suppression of material facts, as pleaded in the

reply, and even on that ground alone, irrespective of any merits, the writ petition is liable to be dismissed. It was also contended, that the writ petition has been signed and sworn, not by the petitioner, but by Jagtar Singh, claiming to be power of attorney holder, but then the power of attorney has not been produced, apart from the fact that, in the affidavit filed alongwith the writ petition he has described himself to be power of attorney holder, while in the affidavit filed in support of the rejoinder, he has described himself to be the real brother of the petitioner, as against which, in the affidavit filed in support of the documents alongwith the rejoinder, he has described himself to be the brother of petitioner Harnam Singh, while a look at the title of writ and description of Jagtar Singh shows, that Harnam Singh is son of Jhanda Singh, while Jagtar Singh is shown to be son of Ganga Singh. Thus, it is very much suspicious, as to whether the writ has been filed by correct person, so as to be maintainable.

I have considered the submissions and have gone through the papers on record.

Since it is not in dispute that the writ petition No.663/86 was filed, therefore, I requisitioned that file from the office, and from perusal of the order-sheets of that file, it transpired that, that writ was ordered to be listed for final disposal alongwith writ No.664/86 and

665/86 and, therefore, files of these writ petitions were also requisitioned, and the perusal of these two files of writ no. 664 and 665 of 1986, which are filed by Kartar Singh, the purchaser under present Annex.R/5/2, makes starling revelations.

In these circumstances, during course of hearing on 16.5.2007, I directed learned counsel for the petitioner, to file an affidavit of the petitioner Harnam Singh, alongwith his latest colored photograph, to make sure, as to whether he owns the writ petition or not, and accordingly, today affidavit has been filed, wherein it has been deposed, that writ was got filed through Jagtar Singh, his power of attorney holder, and the case was being prosecuted according to his instructions. Thus, in view of this affidavit, I am inclined to consider, that the writ petition is filed on behalf of the petitioner Harnam Singh. At this place, from a look at the rejoinder filed by the petitioner, one thing also becomes clear from perusal of para-4 of the rejoinder, that it is not in dispute, that the petitioner Harnam Singh has sold this land to Kartar Singh, and this Kartar Singh is the brother of Jagtar Singh, which Jagtar Singh is the power of attorney holder of Harnam Singh. This coupled with the fact, that a look at the sale deed, Annex.R/5/2 shows, that this sale deed has been executed by this very Jagtar Singh, in favour of his brother Kartar Singh, and purporting to execute as the

power of attorney holder, and in above para-4 of the rejoinder, this transaction of sale in favour of Kartar Singh is not disputed, rather a stand has been taken, that since the land has already been sold by registered sale deed, agreement could not have been entered into in favour of Bakhtawar Singh and Sher Singh, and even if entered into, it is futile. In my view, these facts do make it clear to the Court, that the writ petition is being filed in the name of Harnam Singh, who has already alienated away all his rights to Kartar Singh, and precisely, therefore, the writ petition, and rejoinder etc., are all being sworn by Jagtar Singh, the brother of the purchaser Kartar Singh. Be that as it may.

Coming to the merits of the contentions on either side; from the pleadings recapitulated above, it is clear, that the revision decided vide Annex.3 was filed against the order Annex.2 in the year 1978, being revision No.60/78 and was decided on 18.12.85, and during this period, on 26.3.85, the allotment of land was made in favour of Sevi Bai. In rejoinder it has not been disputed, that against this allotment, an appeal was filed by petitioner, which was dismissed on 14.8.85, and against that order a further revision was filed, which was also dismissed on 3.3.86, and that was further challenged by way of writ petition No.663/86, which was decided on 28.1.92. A stand was taken, to the effect, that since the writ petition was disposed of

in view of the fact that revision was pending and the questions were to be gone into in that revision, non-discloser of these facts is not material.

I am not inclined to accept this contention that the non-discloser was not material, more so in view of the fact, the respondents' further case is, that this revision was dismissed on 18.12.84, and the restoration application was filed as late as on 8.4.85 only. Thus, as on the date when the allotment was made in favour of Sevi Bai on 26.3.85, the revision was not pending. In that view of the matter, it was all the more necessary for the petitioner to have not only disclosed the factum of his having challenged the allotment in favour of Sevi Bai in appeal and revision and writ, rather it was also necessary for him to make discloser about the facts of the revision having been dismissed in default on 17.12.84 and restoration application having been filed on 8.4.85 only, and then could have taken any stand about the effect of restoration or otherwise. Therefore, in my view, the petitioner is clearly guilty of suppression of material fact, and in view of the settled legal position, as consistently laid down by Hon’ble the Supreme Court, the petitioner is clearly dis-entitled to maintain this writ or to be heard on merits.

The matter does not end here, inasmuch as, as observed above, after requisitioning the file of writ

No.663/86, when the files of writ No.664 and 665 of 1986 were also requisitioned, it transpired there-from, that the land comprised in Kila Nos.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 and 10 biswa of Kila No.13 of Murabba no. 8 had been allotted to one Jaidevi wife of Jhagora, and there was some litigation regarding, or consequent upon, the alienation of that land, between Kartar Singh and other persons, with respect to that property. At the same time, what is further significant to note is, that in Annex.R/5/2 the petitioner has sold Kila No.14 to 25 and 10 biswa land of Kila No.13 of Murabba No.8 and has sold Kila No.1 to 12 and 10 biswa of Kila No.13 of Murabba No.9. Thus, 25 bighas of land has been sold. Then even in Annex.R/5/3 12½ bigha portion of land of Murabba No.8 comprised of Kila No.14 to 25 and 10 biswa of Kila No.13 was agreed to be sold. This, coupled with the fact, that in the order Annex.1, it has been made clear, that thereby the allotment of 12 bigha 10 biswa of land comprised in Chak 8 H Bada only has been cancelled, and it has been found, that 12 bigha 10 biswa land in Murabba No.9 of 8 H Bada has not been allotted to Harnam Singh, and that he seems to be in unauthorised occupation, therefore, possession was directed to be resumed forthwith. It is in the background of these facts, that the petitioner has come up in this writ petition with a clear case of 50 bighas of land comprised in Chak 8 H Bada and Chak 5C Choti to have been allotted to his brother Mehtab Singh and himself, and in the family partition, 25

bighas of land comprised in Chak 5C Choti to have fallen in the share of Mehtab Singh, and 25 bighas of land in Chak 8H Bada to have fallen to his share, and with this, has not even disclosed the date of allotment, much less has he produced the copy of the allotment order. Likewise, in para-6 it is pleaded, that vide order Anex.1, the Managing Officer cancelled the allotment of 25 bighas of land. A look at Annex.2, which was an appeal filed against the order Annex.1, does show, that therein this part of the finding recorded in Annex.1, about 12½ bigha of land in Murabba No.9 having not been allotted to the petitioner, and it being in his unauthorised occupation, had not at all been assailed, as no submission in that regard has been made. Likewise is the position in Annex.3 and 4.

That being the position, the obvious conclusion is, that the petitioner has come with a deliberately false case, about having been allotted 25 bighas of land in Murabba No.8, rather it is clearly demonstrated, that his allotment was only of 12½ bigha, and that had been cancelled, still the petitioner had been continuing litigation for 25 bigha, and has filed the writ petition also. In view of this, it is clear that the petitioner is guilty of deliberate mis-statement of fact also, by laying a claim for 25 bighas of land in Murabba No.8, despite having not been allotted that land. It further appears from Annex.4, that 12½ bigha of land comprised of Kila No.14 to

25 and 10 biswa of Kila No.13 of Murabba No.8, and 12 bigha comprised in Kila No.1 to 12 and 10 biswa of Kila No.13 of Murabba No.9 has been allotted to Sevi Bai on 26.3.85, and on the face of the findings recorded in Annex.1, with respect to the land comprised in Murabba No.9, and those findings having not been challenged, yet the petitioner has maintained the claim in the writ petition, and has thus, tried to mislead the Court, on the anvil of identity of the land also.

Thus, in view of the above conduct, the petitioner is clearly disentitled to maintain the present writ petition.

Even otherwise, even if I were to look into the matter on merits, it is clear that the petitioner has no claim on the entire 25 bighas of land comprised in Murabba No.8, and also has no claim over the part of the land comprised in Murabba No.9. So far 12½ bigha of land comprised in Murabba No.8 is concerned, that having been allotted to Sevi Bai on 26.3.85, i.e. at a point of time when no litigation was pending with respect to this land before any authority, merely because after Sevi Bai was put into possession on 29.3.85, the petitioner got the revision restored by moving restoration application on 8.4.85, which is clearly shown to have been restored, without hearing Sevi Bai, it cannot be said, that unless the petitioner

gets the allotment of Sevi Bai set aside, he has any claim over the land, and since the allotment of Sevi Bai has been upheld in appeal and revision, the petitioner cannot be granted the relief, as claimed in the writ petition.

Yet another aspect of the matter is, that the petitioner has already sold the land to Kartar Singh, vide Annex.R/5/2, and the petitioner stands to the transaction by pleading taken in para-4 of the rejoinder. In those circumstances, petitioner cannot be said to be having any subsisting interest, and so far the provisions of Rule 63 are concerned, may be, that thereunder the person, whose claim has not been verified may also be entitled to retain the land, but then since the petitioner has already sold away the land, and in view of the land having been allotted to Sevi Bai, the land being no more available, it cannot be said that the petitioner has any right to claim the land in question either.

Thus, taking from any standpoint, I do not find any merit in the writ petition. The same is, therefore, dismissed.

The parties shall bear their own costs.

(N P GUPTA),J.

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